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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,254	02/05/2007	Susumu Yamaguchi	4600-0120PUS1	6745
2292 7590 01/21/2011 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER WILLIAMS, LELA	
			ART UNIT 1789	PAPER NUMBER
			NOTIFICATION DATE 01/21/2011	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No. 10/578,254	Applicant(s) YAMAGUCHI ET AL.	
	Examiner LELA S. WILLIAMS	Art Unit 1789	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/5/2010, 8/6/2010</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. Applicants' amendment filed on November 2, 2010 has been fully considered. The amendment necessitated the new grounds of rejection set forth below and therefore, the following action is final.

Claim Objections

2. Claims 27 and 30 are objected to because of the following informalities: the claims state a linolenic acid content of 3-25%, this be a linoleic acid content. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 30 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claims states:

A method for improving body taste of a vegetable fat and oil composition, comprising adding arachidonic acid and/or an ester thereof to a composition consisting of vegetable fat and oil having an α -linolenic acid content of 5% or less, an oleic acid content of 20-86%, and/or a linolenic acid content of 3-25%, wherein the concentration of the arachidonic acid is 10-100,000 ppm.

There is no support in the present specification for "composition consisting of vegetable fat and oil having an α -linolenic acid content of 5% or less, an oleic acid content of 20-86%, and/or a

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linolenic acid content of 3-25%”, as the present specification also discloses the addition of alpha-tocopherol and/or an iron component [0031].

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kyle US 5,550,156.

7. Kyle discloses blending microbial oils, to include those containing arachidonic acid, with vegetable oil (col. 2, lines 40-65; col. 4, lines 1-5). Kyle teaches the vegetable oil to be borage oil (col. 3, lines 38-50), the same oil identified by Applicant as the preferred oil of the present invention. Therefore, it is clear that the oil intrinsically does not substantially contain alpha-linolenic acid, therefore having an amount of 5% or less, and contains the presently amount of 20-86% oleic acid. The reference does not disclose a definite amount of arachidonic acid to be added to the vegetable oil; however, the reference does disclose:

An objective in mixing the oils is to obtain an additive which will provide an infant formula with a desired omega-3 and omega-6 PUFA composition similar to that found in breast milk. While the proportion of the desired fatty acids in a microbial oil can vary, this proportion can easily be determined and the amount of oil adjusted to provide the desired amount of PUFA. Similarly, the percentage of desired PUFA in fish oil or vegetable oils can easily be determined and the amount of the oil to be added can be adjusted as necessary to achieve the desired results. (col. 3, lines 20-30)

The reference further teaches:

Typically, human breast milk contain from about 0.5 to 0.6% of its fatty acid content as ARA (col. 6, line 47).

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Given Kyle's teaching of breast milk comprising 0.5 to 0.6% ARA as well as the teaching that the oils are mixed to obtain additive that provides infant formula with similar PUFA composition to that of breast milk, it therefore would have been obvious to one of ordinary skill in the art to use 0.5 to 0.6% ARA in the final oil product of Kyle to produce oil composition that provides infant formula with similar PUFA composition to that of breast milk. Further, given that Kyle discloses method identical to that claimed, it is clear that the ARA would intrinsically improve the body taste of the vegetable oil composition.

8. **Regarding claims 29-31**, given that Kyle teaches that a microbial oil containing ARA can be blended with borage oil (col. 1, line 50; col. 3, lines 15-20, 45), the reference meets the "consisting of" language of the present claims.

Response to Arguments

9. Claims 26-31 are currently pending. Claims 1-25 are cancelled.

10. Applicant's arguments with respect Kortes WO 03/051139 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LELA S. WILLIAMS whose telephone number is (571)270-1126. The examiner can normally be reached on Monday to Thursday from 7:30am-5pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LELA S. WILLIAMS
Examiner, Art Unit 1789

/L. S. W. /

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1787